

FILED

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF ALABAMA
 EASTERN DIVISION

CYNDI KNEZEVICH

)

Plaintiff,

)

v.

)

MICHAEL'S, INC., and
 HOWARD WILLIAMS,

)

Defendants.

)

APR 26 AM 10:47
 U.S. DISTRICT COURT
 N.D. OF ALABAMA

Civil Action No.: 03-PT-59-E

ENTERED
 APR 26 2004**MEMORANDUM OPINION**

On March 29, 2004, this court filed certified questions to the Supreme Court of Alabama. This was in accord with admonishment(s) from the Eleventh Circuit Court of Appeals that district courts should do so when there are unresolved questions of state law. On April 21, 2004, the Supreme Court of Alabama entered an order declining to answer said certified questions.

This court hereby incorporates its discussion associated with its said certification. Based upon what this court feels that the Supreme Court of Alabama would hold if it answered said questions, this court now concludes that the defendant Michael's cannot maintain its cross-claim against the defendant Williams. This court so decides with some reluctance because this court is of the opinion that if the allegations against Williams are true, he should probably not be able to walk away from money damages.

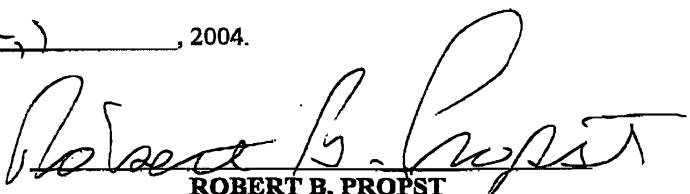
On the other hand, it is undisputed that Michael's cannot pursue a cross-claim on the plaintiff's federal claim against it. It settled that claim and there can be no reasonable distinction between what it paid to settle the federal claim and what it paid to settle the state law claims. This court is of the opinion that the Supreme Court of Alabama would hold, if addressed, that an

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employer who is solely liable under Title VII cannot maintain a cross claim against an employee based on alleged state law violations arising out of the same operative facts and alleged misconduct. There is no reasonable way to separate the claims. Other questions posed in the certification may also be pertinent.

This action and all claims and cross-claims will be dismissed.¹

This 26th day of April, 2004.



ROBERT B. PROPST
SENIOR UNITED STATES DISTRICT JUDGE

¹Perhaps an appellate court will have better luck.